

in opinion

A 49

November 5, 1954

Frank D. Merrill, Commissioner  
Department of Public Works and Highways  
State House Annex  
Concord, New Hampshire

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CONCORD, N.H.

Dear General Merrill:

It would be easier all around if I could find it possible to agree with your October 29, 1954, comments on my October 22 opinion but, upon review of that opinion in view of your comments thereon, the law as enacted does not permit the interpretation you request and the October 22 ruling is affirmed.

While your proposed program of highway construction may contemplate fifteen years of construction, section 10 of chapter 83 of Laws of 1951 relates merely to the time limit within which bonds issued under the authority of this particular chapter are repayable out of road tolls and does not extend the life of this special appropriation beyond the provisions of R.L., c. 22, s. 29, nor otherwise authorize the issuance of bonds beyond the life of the appropriation. I discussed this problem at some length with Assistant Commissioner J. Harold Johnson before my October 22 opinion and suggested remedial legislation which is attached in proposed form. This clause will not salvage the appropriation of s. 10, c. 83, Laws of 1951, however.

With respect to whether the October 22 ruling requires special and separate accounting, Revised Laws, chapter 90-A, as inserted by Laws of 1950, chapter 5, part 9, sections 17 through 19, specifically relate to required accounting and application of funds to the purposes for which appropriated and the duty to account in accordance with the provisions thereof exists independently of my opinion. The direction that the sum appropriated be expended under your direction vests in you the authority to determine in what manner and for what highways its expenditure would be prudent but does not prolong the life of the appropriation itself. The appropriation and authorization of chapter 34, Laws of 1953, tend to negative any inference that the appropriation of chapter 83, Laws of 1951, was intended to extend beyond the normal life of such appropriations and

Frank D. Merrill, Commissioner

- 2 -

November 5, 1954

language exempting this appropriation from the provisions of R.L., c. 22, s. 23, or establishing this appropriation as a continuing appropriation cannot be found in the law.

From the fact that bonds authorized under this appropriation were not utilized, it can be inferred that increased road tolls were sufficient to finance the necessary projects without long-term financing as readily as one can read into the law an extension of the power to issue such bonds.

The fact that the 1951 legislature included in this legislation renewed authority for old authorizations indicates that the legislature recognized the need to specifically provide such renewed authority and I suggest that any needed balance of the 1951 special appropriation which is needed for the future should be so handled in the 1953 legislature. As to other special appropriations not yet expired, the attached suggested legislation, if enacted, should adequately prolong their existence in line with your desires.

In the course of my discussions with Assistant Commissioner Johnson and Mr. Buckminster before my October 22 opinion I understood that the 1951 legislature had considered in chapter 255 of Laws of 1951 \$18,674,500 proposed expenditure in the biennium but it is also clear that \$18,674,500 anticipated revenue balanced this figure so that the result is "Net appropriation - 0.00" and there is no appropriation against general funds of the state to authorize the Treasurer to issue bonds against the general funds of the state for highway purposes.

I further suggest, in order that legislative intent may be clear, that a section reading, "The appropriation provided in this chapter shall be a continuing appropriation and shall not lapse," be inserted in all future proposed legislation involving appropriations to insure against such lapse as has here occurred, if that be your desire as to the particular appropriation.

I am sending a copy to Governor Gregg together with copy of my October 22, 1954, opinion and Mr. Merrill's request for that opinion in order that he may have a full file on the problem.

Sincerely,

George F. Nelson  
Assistant Attorney General

GFN/aml

cc: Governor Gregg